

Message Text

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ACTION NEA-11

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R 030440Z JUN 78
FM AMEMBASSY KATHMANDU
TO SECSTATE WASHDC 2187
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C O N F I D E N T I A L SECTION 1 OF 2 KATHMANDU 2848

E.O. 11652: GDS
TAGS: PINT, SHUM, NP
SUBJECT: GON APPEALS SPECIAL COURT RULINGS IN B.P. KOIRLA CASE

REF: (A) KATHMANDU 1137, (B) STATE 113524

1. PRESS ANNOUNCED MAY 29 THAT GOVERNMENT HAS EXERCISED ITS RIGHT TO APPEAL SPECIAL COURT DECISIONS OF LATE FEBRUARY/EARLY MARCH ACQUITTING B.P. KOIRALA ON FIVE CHARGES (REFTEL A AND PREVIOUS). GOVERNMENT APPEAL LIKEWISE APPLIES TO ACQUITTALS GRANTED OTHERS CHARGED WITH B.P., INCLUDING GANESH MAN SINGH. B.P.'S LAWYER, KUSUM SHRESTHA, CONFIRMED PRESS REPORTS IN DISCUSSION WITH EMBOFF, NOTING THAT GOVERNMENT APPEAL ACTUALLY FILED ON MAY 26. SHRESTHA STATED THAT THERE WAS NO WAY OF TELLING HOW LONG PROCESS OF CONSIDERING APPEAL MIGHT TAKE. FIRST STEP IS FOR CENTRAL REGIONAL COURT (NEXT SUPERIOR COURT ABOVE SPECIAL COURT WHICH HEARD CHARGES ON B.P. AND OTHERS) TO CONSIDER LOWER COURT RULINGS IN LIGHT OF SUBSTANCE OF GOVERNMENT'S APPEAL. IF REGIONAL COURT SEES ANY MERIT IN GOVERNMENT'S CASE IT WILL THEN ASK DEFENSE TO PRESENT COUNTER ARGUMENTS, AFTER WHICH LOWER COURT DECISIONS COULD BE CONFIRMED OR OVERTURNED. IN LATTER EVENT, REGIONAL COURT EMPOWERED EITHER REACH ITS OWN
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VERDICT OR ALTERNATIVELY TO REFER CASE BACK TO
SUBORDINATE COURT.

2. IN VIEW OF ABOVE DEVELOPMENT AND FACT B.P.
APPEARS ABOUT READY TO RESUME MORE ACTIVE ROLE
IN WAKE HIS LATEST OPERATION, EMBASSY BELIEVES
BRIEF REVIEW OF EXACTLY WHERE B.P. CASE STANDS

UNDER NEPALESE JUDICIAL SYSTEM MIGHT BE HELPFUL.

(A) AT TIME HIS TRIAL STARTED LAST FEBRUARY, B.P. FACED SEVEN CHARGES (NOT RPT NOT EIGHT AS FREQUENTLY REPORTED). HE WAS ACQUITTED ON FIVE, BUT CONSIDERATION OF THE OTHER TWO WAS POSTPONED TO ALLOW TIME FOR FURTHER GATHERING OF EVIDENCE.

(B) IN THE MIDDLE OF THAT TRIAL SESSION B.P. WAS PAROLED TO PERMIT FURTHER MEDICAL TREATMENT. HE REMAINED IN COUNTRY, HOWEVER, TO COMPLETE THE HEARINGS IN THE CASES ON WHICH THE GOVERNMENT WAS READY TO PROCEED, RESULTING IN THE ACQUITTALS NOTED ABOVE. BUT B.P. PUBLICLY ACKNOWLEDGED THAT COURT ACTION WAS INCOMPLETE AND THAT HIS PAROLE DID NOT RELIEVE HIM OF RESPONSIBILITY TO RETURN AND FINISH COURT PROCEEDINGS.

(C) EVEN IN CASE OF CHARGES ON WHICH HE -- AND OTHERS -- WERE ACQUITTED, NEPALESE LAW PROVIDES FOR RIGHT OF APPEAL BY GOVERNMENT. MOREOVER, IN EVENT OF SERIOUS CHARGES SUCH AS ARE INVOLVED IN THIS CASE, THERE IS PROVISION FOR AUTOMATIC REVIEW BY HIGHER COURT EVEN IF GOVERNMENT DOES NOT EXERCISE ITS APPEAL RIGHT. FOR THIS REASON, AS NOTED REF A, AS B.P. HEADED FOR STATES, HIS FELLOW ACCUSED, INCLUDING GANESH MAN SINGH, REMAINED IN CUSTODY PENDING COMPLETION OF THIS APPEAL/REVIEW PROCESS. UNDER LAW GOVERNMENT
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HAS SEVENTY DAYS WITHIN WHICH TO FILE APPEAL, WITH PROVISION FOR FURTHER SIXTY DAY EXTENSION OF THAT PERIOD WHICH IS GRANTED VIRTUALLY AUTOMATICALLY. IN CURRENT CASE, GOVERNMENT FILED ITS APPEAL 83 DAYS AFTER LAST ACQUITTAL MARCH 3.

(D) NEXT STEP IS CENTRAL REGIONAL COURT CONSIDERATION OF APPEAL AS PER PARA 1 ABOVE.
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C O N F I D E N T I A L SECTION 2 OF 2 KATHMANDU 2848

3. BOTTOM LINE OF ALL OF ABOVE, IS THAT KOIRALA CASE, AS KING NOTED IN HIS LETTER TO PRESIDENT (REF B), IS STILL VERY MUCH BEFORE NEPALESE JUDICIAL SYSTEM AND IS BEING CONSIDERED IN ACCORDANCE THEREWITH. KOIRALA'S PAROLE, WHICH FINDS HIM CURRENTLY IN THE UNITED STATES AND FREE TO TRAVEL BACK TO NEPAL AS HE WISHES, IS NEVERTHELESS STRICTLY LIMITED. IT WAS GRANTED TO PERMIT FURTHER MEDICAL TREATMENT AND IN NO WAY RELIEVES HIM OF THE JUDICIAL PROCEEDINGS STILL PENDING AGAINST HIM -- NOT ONLY THE TWO REMAINING CHARGES, BUT ALSO THE APPEAL/REVIEW PROCESS ON THE OTHER FIVE, WHICH IS INTEGRAL PART OF NEPALESE LAW. LIKEWISE, THERE IS NO GUARANTEE THAT KOIRALA'S PAROLE WILL BE CONTINUED ONCE HE RETURNS TO KATHMANDU. HIS FELLOW ACQUITTED DEFENDANTS REMAIN IN CUSTODY AND, WHILE THERE HAVE BEEN APPEALS IN LOCAL PRESS FOR RELEASE OF ONE -- GANESH MAN SINGH -- ALSO ON MEDICAL GROUNDS, NO ONE IS CLAIMING THAT THE GOVERNMENT IS ACTING OTHER THAN ACCORDING TO ACCEPTED PRACTICE IN KEEPING DEFENDANTS IN CUSTODY UNTIL JUDICIAL PROCESS FULLY COMPLETED. IN SHORT, B.P. TOO MAY BE ONCE AGAIN DETAINED ON HIS RETURN, JUST AS HE WAS LAST NOVEMBER, TO FACE CRIMINAL CHARGES WHICH ARE STILL CONFIDENTIAL

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PENDING.

4. COMMENT: AS DEPARTMENT'S HUMAN RIGHTS REPORT ON NEPAL TO CONGRESS OF 1/31/78 NOTED, NEPAL'S JUDICIAL SYSTEM IS UNDOUBTEDLY SUBJECT TO PRESSURES/DIRECTION BY GON. HOWEVER, TO DATE COURTS INVOLVED WITH CONSIDERATION OF CRIMINAL CHARGES BROUGHT AGAINST B.P. KOIRALA APPEAR TO BE ACTING INDEPENDENTLY AND FULLY IN ACCORD WITH THE LEGAL CODE. CLEARLY THE SYSTEM IS NOT WHAT WE ARE ACCUSTOMED TO -- MOST NOTABLY IN GIVING PROSECUTION AS WELL AS DEFENSE RIGHT OF APPEAL -- BUT IT DOES APPEAR TO PRESERVING

THE RIGHTS OF THOSE INVOLVED.

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